

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD MERLIN and TENNESSEE VALLEY AUTHORITY,
PARADISE FOSSIL PLANT, Drakesboro, Ky.

*Docket No. 98-971; Submitted on the Record;
Issued December 1, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a back injury in the performance of duty on February 3, 1997.

In the present case, appellant filed a claim on February 24, 1997, alleging that he injured his back on February 3, 1997 when he slipped and fell while cleaning a shower area. The Office of Workers' Compensation Programs denied the claim by decision dated June 17, 1997, on the grounds that the medical evidence was insufficient to establish the claim. By decisions dated September 3, September 25, and December 10, 1997, the Office reviewed the case on its merits and denied modification of the denial of the claim.

The Board has reviewed the case and finds that appellant has not met his burden of proof in establishing his claim.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that he or she sustained an injury while in the performance of duty.² In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.³

¹ 5 U.S.C. §§ 8101-8193.

² *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.110(a).

³ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

In this case, the Office stated in its June 17, 1997 decision that it was “not disputing that the fall occurred,” but in the December 10, 1997 decision, the Office stated that the evidence did not support that “an injury occurred at the time and place and in the manner alleged” because of failure to promptly report the injury and failure to mention the injury to Dr. Gary Givens on February 5, 1997. The Board notes that the proper analysis is to first determine whether the *incident* occurred in the time, place and manner alleged. It is not clear whether the Office was attempting to make a determination that the incident did not occur as alleged. An employee’s statement regarding the occurrence of an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.⁴ The record indicates that appellant reported the injury on February 8, 1997, and while the history provided to Dr. Givens is relevant to the probative value of the medical evidence, it does not establish that the incident failed to occur as alleged.

With respect to whether the employment incident caused an injury, the Board finds that the medical evidence is not sufficient to establish fact of injury. As noted above, appellant did not provide an accurate history of the incident to Dr. Givens on February 5, 1997. The report from Dr. Givens stated that appellant had pain in his back and left leg, with appellant reporting similar complaints a year or two earlier. He further noted, “there has been no trauma,” and he diagnosed left lumbar radiculopathy. In a March 27, 1997 report, Dr. Givens stated that he had seen appellant only once and “had no opinion as to what is going on with him.” It is not until a brief October 27, 1997 report that Dr. Givens stated that, based on the history given, the February 5, 1997 examination and a magnetic resonance imaging performed two days later, “it is my opinion that the fall at work aroused his preexisting dormant condition and was causative factor in his need for subsequent treatment and his present disability.” Dr. Givens did not explain the specific history that he was provided, or otherwise discuss his prior reports. He does not provide a complete and accurate factual and medical background, does not provide a diagnosis, nor does he provide medical rationale to explain causal relationship between a diagnosed condition and the employment incident. The Board finds that his report is not sufficient to meet appellant’s burden of proof.

The record also contains a brief November 10, 1997 report, Dr. Timothy P. Schoettle, a neurologist. Dr. Schoettle stated that he had treated appellant for an S1 radiculopathy dating back to a “fall at work” on February 3, 1997, and further stated, “based upon the history and information I have available, it is my opinion, within a reasonable degree of medical certainty, that the source of his S1 radiculopathy was directly caused by his work-related injury in February of 1997.” The Board notes that while there are treatment notes from Dr. Schoettle commencing in June 1997, no history of an employment incident had been previously noted and it is not clear what “history and information” he relied upon for his opinion. Dr. Schoettle noted that appellant had no preexisting back condition, but since the February 5, 1997 report from Dr. Givens had indicated prior back complaints, it is not clear whether Dr. Schoettle was familiar with the medical history. The November 10, 1997 report does not provide a complete and accurate background, nor a reasoned opinion on the issue of causal relationship between an S1 radiculopathy and the employment incident. It is, therefore, not sufficient to meet appellant’s burden of proof in this case.

⁴ *Thelma Rogers*, 42 ECAB 866 (1991).

In the absence of a reasoned medical opinion, based on an accurate factual and medical background, appellant has not established an injury in the performance of duty in this case.

The decisions of the Office of Workers' Compensation Programs dated December 10, September 25, September 3, and June 17, 1997 are affirmed.

Dated, Washington, D.C.
December 1, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member